

SENATE ENVIRONMENT AND ENERGY COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 2374**

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 15, 2021

The Senate Environment and Energy Committee favorably reports Assembly Bill No. 2374 (1R/ACS) with committee amendments.

This bill, as amended by the committee, would require the New Jersey Economic Development Authority (EDA) to establish a Garden State C-PACE program to facilitate the financing of C-PACE projects.

"C-PACE" is the acronym for the term "commercial property assessed clean energy." As defined in the bill, "C-PACE project" means: (1) the acquisition, construction, capital lease, installation, or modification of an energy efficiency improvement, renewable energy system including energy storage, microgrid, water conservation improvement, stormwater management system, electric vehicle charging infrastructure, flood resistant construction improvement, or hurricane resistant construction improvement, in each case affixed to a property, including new construction of such improvements, within a participating municipality; (2) a microgrid or district heating and cooling system in which a property owner within the municipality participates for the duration of the C-PACE assessment; or (3) a power purchase agreement with respect to a renewable energy system affixed to a property. As used in the bill, "property" means: industrial, agricultural, or commercial property; residential property containing five or more dwelling units; common areas of condominiums and other planned real estate developments; and property owned by a tax-exempt or nonprofit entity, including, but not limited to, schools, hospitals, institutions of higher education, or religious institutions.

The bill would require the EDA, as part of the Garden State C-PACE program, to develop uniform assessment documents and program guidelines for the financing of C-PACE projects to be undertaken by property owners as local improvements and the provision by ordinance for a C-PACE assessment to be imposed on properties, if the owner of a property requests the C-PACE assessment in order to undertake and finance a C-PACE project.

The C-PACE assessment would be used to repay the financing for the C-PACE project and would constitute a single, continuous first lien on the property. It would be treated as a municipal lien for all purposes of law. C-PACE projects on an individual property subject to the same C-PACE assessment agreement collectively would constitute a separate local improvement and would be assessed separately to the property owner benefitted thereby.

Within 270 days after the bill is enacted into law, the EDA would be required to establish the Garden State C-PACE program by publishing on its Internet website: (1) uniform assessment documents; (2) a model opt-in ordinance; (3) program guidelines; and (4) the process by which a county or an "authorized municipality" – defined by the bill as municipalities in the top third in the State, in terms of population – would apply to the EDA for approval of a local C-PACE program ordinance. The bill provides that the EDA may contract with one or more third-party administrators to assist in the implementation or administration, or a combination thereof, of the Garden State C-PACE program pursuant to a competitive bidding process. However, the EDA may not delegate its responsibility for general oversight of the program.

Section 5 of the bill sets forth requirements for the model opt-in ordinance, as well as any local C-PACE program ordinance. Section 5 of the bill also specifies certain minimum procedures and requirements to be included in the Garden State C-PACE program guidelines (to be developed by the EDA) and any local C-PACE program guidelines (to be developed by a county or authorized municipality). The bill also sets forth requirements and procedures concerning the disbursement of funds for financing of C-PACE projects, and the payment and assignment of C-PACE assessments.

Section 6 of the bill provides that a county or authorized municipality may adopt an ordinance to establish a local C-PACE program to facilitate the financing of C-PACE projects in that county or municipality. In a county or authorized municipality that has established a local C-PACE program pursuant to a local C-PACE program ordinance, any C-PACE projects in that authorized municipality or, in the case of a county, in any participating municipality located in that county that has adopted an opt-in ordinance, may be financed pursuant to the Garden State C-PACE program or the local C-PACE program. In a municipality that has not established, or is located in a county that has not established, a local C-PACE program pursuant to a local C-PACE program ordinance, any C-PACE projects in that municipality may be financed pursuant to the Garden State C-PACE program only. A county or authorized municipality seeking to establish a local C-PACE program would be required to submit an application to the EDA for approval pursuant to section 7 of the bill.

Section 8 of the bill would authorize the EDA to charge a county or authorized municipality a fee to review a proposed local C-PACE program ordinance or program guidelines, and would authorize the EDA and participating municipalities to charge property owners a fee for the review of an application for a C-PACE project. In addition, a participating municipality may charge a property owner an annual fee for the billing, collecting, and remitting of the installment payments on the C-PACE assessment.

Section 9 of the bill would authorize financing and refinancing for the implementation of C-PACE projects for property owners in exchange for a C-PACE assessment on the property. The C-PACE assessment would be used to repay the financing. The bill authorizes a county or authorized municipality to apply to a county improvement authority that issues bonds, or may issue bonds on its own, to finance the program. Section 9 of the bill also authorizes capital providers to directly finance C-PACE projects, including through the issuance of bonds.

No later than 18 months after the EDA establishes the Garden State C-PACE program and annually thereafter, the EDA would be required to prepare and submit, to the Governor and the Legislature, a report describing the implementation and operation of the Garden State C-PACE program. In addition, no later than five years after the EDA establishes the Garden State C-PACE program, the EDA would be required to prepare and submit, to the Governor and the Legislature, a report that reviews and assesses implementation of the Garden State C-PACE program, including a review of foreclosure rates and any other factors the EDA deems appropriate. The bill would also establish analogous reporting requirements for counties and authorized municipalities that develop local C-PACE programs.

Under current law, P.L.2011, c.187 (C.40:56-1.4 et al.), the governing body of a municipality, upon application to and approval by the Director of the Division of Local Government Services in the Department of Community Affairs, may undertake the financing of the purchase and installation of renewable energy systems and energy efficiency improvements made by property owners. By ordinance, the municipality may provide for a "clean energy special assessment" to be imposed on those properties when the property owner has requested the assessment in exchange for receiving assistance with the initial financing. Under current law, the only projects eligible for this program are installations of renewable energy systems and energy efficiency improvements. This bill would prohibit the Director of the Division of Local Government Services from approving applications from municipalities pursuant to P.L.2011, c.187 after the date the EDA publishes the information required by this bill to establish the Garden State C-PACE Program.

Lastly, the bill would amend the "county improvement authorities law" to add to the purposes of a county improvement authority the

implementation and administration, or a combination thereof, of a local C-PACE program and the authority to issue bonds to finance a C-PACE project for a local C-PACE program pursuant to the bill.

The committee amendments to the bill would:

- (1) revise the findings and declarations section;
- (2) replace the term "administration agreement" with the term "Garden State program agreement" and include additional provisions in the definition of "Garden State program agreement";
- (3) restrict the municipalities that are authorized to develop local C-PACE programs to those in the top third in terms of population, to be known as "authorized municipalities" under the bill;
- (4) provide that certain commercial lending institutions can act as "capital providers," as that term is defined by the bill;
- (5) insert new provisions concerning the types of new construction projects that would be considered C-PACE projects under the bill, and make other revisions to the definition of "C-PACE project";
- (6) add a definition for the term "launch date," to be used as a deadline for certain activities required under the bill;
- (7) authorize counties to develop local C-PACE programs, subject to certain conditions enumerated in section 6 of the bill;
- (8) modify the definition of "participating municipality" to reflect the difference between the powers established by the bill for a municipality and for an "authorized municipality";
- (9) provide that the EDA may implement an alternative definition of "project costs" in its program guidelines in connection with the financing of new construction;
- (10) revise the definition of "property owner" to exclude certain lessees and to clarify the definition;
- (11) clarify that property owners who use a C-PACE program to install renewable energy systems may transfer the associated transition renewable energy certificates (TREC)s to the entity that financed the installation, and add a definition for "transition renewable energy certificate";
- (12) require authorized municipalities and counties to submit and publish certain reports on their local C-PACE programs, rather than the EDA;
- (13) provide that the Garden State C-PACE program is to consist of the development of uniform assessment documents and program guidelines for the financing of C-PACE projects;
- (14) clarify that the EDA may set the compensation of any third-parties hired to assist in the development of the Garden State C-PACE program;
- (15) provide that the EDA may enter into a memorandum of agreement with one or more State government agencies or instrumentalities in order to fulfill its duties under the bill;
- (16) provide that the EDA may establish a loss reserve, issue guarantees, or both, in order to facilitate the implementation of the bill;

(17) direct the EDA to establish the Garden State C-PACE program 270 days after the bill's effective date, rather than 180 days, and clarify that other activities authorized by the bill cannot commence until the EDA establishes the program;

(18) provide that the principal amount of a C-PACE assessment, when combined with mortgage and other lien obligations on a property may not exceed 90 (rather than 95) percent of the appraised value of the property;

(19) remove a requirement that the model opt-in ordinance, to be developed by the EDA, include certain provisions related to determining a property's value;

(20) insert provisions that explicitly require the EDA and certain counties and municipalities to develop C-PACE program guidelines, and specify additional requirements related to the consistency between the State and local guidelines;

(21) insert certain additional requirements for the content of the C-PACE program guidelines, including underwriting criteria, notice requirements, and loan-duration requirements;

(22) provide that the Garden State C-PACE program may be used for the financing of new construction upon previously unimproved real property;

(23) specify that properties with delinquent taxes, charges, or assessments are not eligible for a C-PACE assessment;

(24) remove a 10-day grace period for the payment of C-PACE assessments and instead provide that the grace period authorized by the relevant municipality may be used;

(25) provide that interest on a C-PACE assessment payment is in addition to any accrued interest and any amount fixed as a penalty for delinquency pursuant to the financing agreement between a property owner and a capital provider;

(26) make various clarifications related to the payment of interest and other penalties for delinquent C-PACE assessments;

(27) provide that a municipality may be compelled to enforce a lien through an action to foreclose on a property in order to satisfy a C-PACE assessment;

(28) clarify that capital providers are to be reimbursed in accordance with the "Eminent Domain Act of 1971," when a property is taken by eminent domain or condemnation, as authorized by the bill;

(29) add certain restrictions on the ability of a municipality or county to delegate the duties related to a C-PACE program to a private party or county improvement authority;

(30) require counties and municipalities seeking to establish a local C-PACE program to include their proposed program guidelines in their application to the EDA;

(31) provide that the EDA has 60 days to review applications from counties and municipalities, rather than 30 days;

(32) provide that EDA may oversee local C-PACE programs to ensure their compliance with the provisions of the bill;

(33) clarify that counties and municipalities that seek to amend their C-PACE programs must receive approval from the EDA;

(34) provide that counties and municipalities must incorporate into their local C-PACE program guidelines any revision made by the EDA to the Garden State C-PACE program guidelines immediately upon the publication of the revision on the EDA's website, although this requirement would not apply retroactively;

(35) remove certain caps on application fees, previously established by section 8 of the bill, that the EDA may charge to property owners who apply to participate in the Garden State C-PACE program;

(36) delete a provision that would have given municipalities explicit authority to charge an application fee to property owners who apply to participate in a local C-PACE program;

(37) provide that capital providers can fund C-PACE project costs by issuing bonds;

(38) provide that guaranties issued by the EDA under section 4 of the bill can be considered "financial assistance" pursuant to section 1 of P.L.1979, c.303 (C.34:1B-5.1);

(39) include additional amendments to section 2 of P.L.2011, c.187 (C.40:56-13.1) to provide that property owners who use a clean energy special assessment program to install renewable energy systems may transfer the associated transition renewable energy certificates (TREC's) to the entity that financed the installation; and

(40) make other technical and clarifying changes to the bill.

This bill, as amended and reported by the committee, is identical to the Senate committee substitute for Senate Bill No. 1953, as also reported by the committee.